

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

Houston Byrd, Jr.,  Plaintiff,  v.  Judge Karen A. Janisch,  Defendant.	Case No. 0:18-cv-913 (SRN/DTS)  <b>ORDER DENYING PLAINTIFF'S MOTION FOR RECUSAL, PLAINTIFF'S MOTION FOR DISMISSAL OF ORDER ADOPTING REPORT AND RECOMMENDATION, AND PLAINTIFF'S MOTION FOR DEFAULT JUDGMENT</b>
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Houston Byrd, Jr., 241 North 10th Street, Newark, Ohio 43055, pro se.

SUSAN RICHARD NELSON, United States District Judge

Plaintiff, Houston Byrd, moves for recusal of the undersigned as well as Magistrate Judge David T. Schultz [Doc. No. 13]. He also moves to dismiss the Court's order adopting the Report and Recommendation ("R&R") of Magistrate Judge Schultz [Doc. No. 15]. Lastly, he moves for default judgment against Judge Karen Janisch [Doc. No. 16]. For the reasons set forth below, this Court denies each of Byrd's motions.

There is no basis for recusal in this case. "A party introducing a motion to recuse carries a heavy burden of proof; a judge is presumed to be impartial and the party seeking disqualification bears the substantial burden of proving otherwise."

*Fletcher v. Conoco Pipe Line Co.*, 323 F.3d 661, 664 (8th Cir. 2003) (quoting *Pope v. Fed. Express Corp.*, 974 F.2d 982, 985 (8th Cir. 1992)). Under 28 U.S.C. § 455,

disqualification is required when bias, previous participation in litigation, financial interest, or a close personal relationship to a party is demonstrated. There is no disqualifying circumstance that would warrant recusal here.

The Order adopting the R&R of Magistrate Judge Schultz was also appropriately entered. (Order Adopting R&R [Doc. No. 9] at 6.) Three days later, the Clerk of Court, Kate M. Fogarty, entered judgment against Byrd and attached a civil notice of appeal. (J. in a Civil Case [Doc. No. 10].)

Finally, Byrd is not entitled to a default judgment against Judge Karen Janisch because his claim against her was dismissed on May 25, 2018. (J. in a Civ. Case [Doc. No. 10].) Byrd's claim was dismissed because he sought relief against a defendant who was immune from suit. *See* 28 U.S.C. § 1915(e)(2)(B)(ii)–(iii); *Atkinson v. Bohn*, 91 F.3d 1127, 1128 (8th Cir. 1996) (per curiam). Judge Janisch is immune from suit because the allegedly wrongful acts or omissions occurred while performing her judicial functions. *See, e.g., Mireles v. Waco*, 502 U.S. 9, 11 (1991).

Accordingly, **IT IS HEREBY ORDERED** that:

1. Plaintiff Byrd's Motion for Recusal [Doc. No. 13] is **DENIED**;
2. Plaintiff Byrd's Motion for the Dismissal of Order Adopting Report and Recommendation [Doc. No. 15] is **DENIED**;
3. Plaintiff Byrd's Motion for Default Judgment [Doc. No. 16] is **DENIED**.

Dated: October 30, 2018

s/ Susan Richard Nelson

SUSAN RICHARD NELSON  
United States District Judge